

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HESCO BASTION LIMITED,)	
)	
Plaintiff,)	
)	C.A. No. 08-266-GMS
v.)	
)	JURY TRIAL DEMANDED
ACS HOLDINGS USA, LLC,)	
)	
Defendant.)	

REPLY TO COUNTERCLAIM

Plaintiff, Hesco Bastion Limited ("Hesco"), by counsel, replies to the counterclaims of defendant, ACS Holdings USA, LLC ("ACS") (DI 8).

75. The allegations in counterclaim ¶ 75 are conclusions of law to which no response is required. To the extent a response is required, admitted.

76. The allegations in counterclaim ¶ 76 are conclusions of law to which no response is required. To the extent a response is required, admitted.

77. The allegations in counterclaim ¶ 77 are conclusions of law to which no response is required. To the extent a response is required, admitted.

78. The allegations in counterclaim ¶ 78 are conclusions of law to which no response is required. To the extent a response is required, admitted.

COUNTERCLAIM I
(Declaratory Judgment of Non-Infringement and Invalidity of the '970 Patent)

79. The foregoing responses are incorporated by reference.

80. Denied.

81. Denied.

COUNTERCLAIM II

(Declaratory Judgment of Non-Infringement and Invalidity of the '297 Patent)

- 82. The foregoing responses are incorporated by reference.
- 83. Denied.
- 84. Denied.

COUNTERCLAIM III

(Cancellation of the MIL Registration - Lanham Act §§ 14, 37; 15 U.S.C. §§ 1064, 1119)

- 85. The foregoing responses are incorporated by reference.
- 86. Denied.
- 87. Denied.
- 88. Denied.
- 89. Denied.
- 90. Denied.
- 91. Denied.

DEFENSES

Hesco sets forth the following defenses and reserves the right to assert additional defenses and claims if their existence is established through discovery or investigation:

- 1. ACS' counterclaims fail to state a claim upon which relief can be granted.
- 2. ACS' counterclaims are barred by laches, waiver, estoppel, and unclean hands.
- 3. ACS' counterclaims are barred in that any damage or injury to ACS was caused by ACS' own actions and/or conduct.
- 4. ACS' counterclaims are barred by assumption of the risk.
- 5. ACS' counterclaims are barred by fraud, as set forth in Count IV of the Complaint.

6. ACS' counterclaims are barred by the Noerr-Pennington doctrine.

REQUEST FOR RELIEF

Hesco respectfully requests that this Court enter judgment against ACS and grant the following relief:

- a. enter judgment denying any and all relief requested by ACS in its counterclaim, and dismissing the counterclaim with prejudice;
- b. declare that ACS has infringed the '970 and '297 patents and that the '970 and '297 patents are not invalid;
- c. declare that this case is an exceptional case under 35 U.S.C. § 285 and award Hesco reasonable attorneys' fees and costs;
- d. declare that ACS has infringed Hesco's "MIL" trademark registration and that the "MIL" registration is neither generic nor invalid;
- e. award costs pursuant to Fed. R. Civ. P. 54(d) or otherwise provided by law; and
- f. such other relief as the Court deems just and appropriate.

JURY DEMAND

Hesco hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on July 9, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on July 9, 2008, I have Electronically Mailed the document to the following person(s):

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